Supreme Court, U.S.
FILED
MAR 1 1993
OFFICE OF THE CLERK

No. 92-6033

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM McNEIL,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE, P.C. IN SUPPORT OF PETITIONER

ARTHUR H. BRYANT
ANNE W. BLOOM
TRIAL LAWYERS FOR
PUBLIC JUSTICE, P.C.
1625 Massachusetts Ave., N.W.
Suite 100
Washington, D.C. 20036
(202) 797-8600

JOSEPH A. POWER, JR.
Counsel of Record
POWER • ROGERS • LAVIN
35 West Wacker Drive
Suite 3700
Chicago, Illinois 60601
(312) 236-9381

Attorneys for *Amicus Curiae*

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	iii
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	
I. THE PROCEDURAL REQUIREMENTS OF THE FTCA SHOULD NOT BE GIVEN A HYPERTECHNICAL CONSTRUCTION BY THE COURTS; RATHER A COMMON-SENSE CONSTRUCTION IS REQUIRED	4
A. THE COMPLEX NATURE OF FTCA PROCEDURAL REQUIREMENTS SUPPORTS A COMMON-SENSE APPROACH IN INTERPRETING FTCA PROCEDURAL REQUIREMENTS	4
B. A COMMON-SENSE CONSTRUCTION OF FTCA PROCEDURE COMPORTS WITH THIS COURT'S TREATMENT OF *PRO SE* LITIGANTS	7
C. THE INHERENT INJUSTICE OF BARRING PETITIONER'S CLAIM REQUIRES THE EQUITABLE TOLLING OF ANY ARGUABLE FTCA DEADLINE	9
II. A HYPERTECHNICAL CONSTRUCTION OF FTCA PROCEDURAL REQUIREMENTS CLASHES WITH CONGRESS' EXPRESS POLICY TO BROADEN THE SCOPE OF THE FTCA AND TO MAKE IT MORE LIKE ORDINARY CIVIL LITIGATION	12

III. THE INAPPROPRIATE DISMISSAL OF PETITIONER'S CLAIM DISSERVES THE INTEREST OF U.S. CITIZENS AND RENDERS THE PURPOSE AND EFFECT OF THE FTCA MEANINGLESS 14

CONCLUSION 15

TABLE OF AUTHORITIES

CASES — PAGE

Abernathy v. United States, 732 F.Supp. 98 (D.Kan. 1990) 6

Bounds v. Smith, 430 U.S. 817 (1977) 14

Campbell v. United States, 534 F.Supp. 762 (D. Hawaii 1982) 6

Celestine v. Veterans Administration, 746 F.2d 1360 (8th Cir. 1984) 6

Estelle v. Gamble, 429 U.S. 97 (1976), *reh'g denied*, 429 U.S. 1066 (1977) 8

Faretta v. California, 422 U.S. 806 (1975) 7, 8

Gregory v. Mitchell, 634 F.2d 199 (5th Cir. 1981) . 6

Haines v. Kerner, 404 U.S. 519 (1972), *reh'g denied*, 405 U.S. 948 (1972) 8

Hallstrom v. Tillamook County, 493 U.S. 20 (1989), *reh'g denied*, 493 U.S. 1037 (1990) 11

Irwin v. Veterans Administration, 498 U.S. 89 (1990), *reh'g denied*, 111 S.Ct. 805 (1990) ... 11

Johnson v. Avery, 393 U.S. 483 (1969) 14

Kubrick v. United States, 581 F.2d 1092 (3rd Cir. 1978), *rev'd on other grounds*, 444 U.S. 111 (1979) 5, 6

McCarthy v. Madigan, ____ U.S. ____, 112 S.Ct. 1081 (1992), *on remand*, 962 F.2d 973 (10th Cir. 1992) 8

McNeil v. United States, 964 F.2d 647 (1992) 3

Ross v. Moffitt, 417 U.S. 600 (1974) 14

Schmidt v. United States, 933 F.2d (8th Cir. 1991) . 11

United States v. Burzynski Cancer Research Institute, 819 F.2d 1301 (5th Cir. 1987) 6

Wolff v. McDonnell, 418 U.S. 539 (1974) 14

United States v. Plattner, 330 F.2d 271 (2d Cir. 1964) 7

LEGISLATION

28 U.S.C. § 2401(b) (1982 ed.) 2, 4

28 U.S.C. § 2675(a) (1982 ed.) 4

Legislative Reorganization Act of 1946, Pub. L. No. 79-601, 60 Stat. 812 (Aug. 2, 1946) 12

Act of Apr. 25, 1949, Pub. L. No. 55, 63 Stat. 62 (1949) 12

1 Stat. 73, 92 (1789) 7

H.R. Rep. No. 276, 81st Cong., 1st Sess. 1 (1949) . 13

S. Rep. No. 1327, 89th Cong., 2nd Sess. 2 (1966) . 7, 13

FED. R. CIV. P. 12(b) 10

OTHER AUTHORITIES

Bradlow, *Procedural Due Process of Pro Se Civil Litigants*, 55 U. Chi. L. Rev. 659 (1988) ... 9

McLaughlin, *An Extension of the Right of Access: The Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule*, 55 Fordham L. Rev. 1109 (1987) 8

Zillman, *Presenting a Claim under the Federal Tort Claims Act*, 43 La. L. Rev. 961 (1983) .. 4-5

No. 92-6033

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM McNEIL,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE, P.C. IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

Trial Lawyers for Public Justice, P.C. ("TLPJ"), is a national public interest law firm devoted to using the legal system to remedy and correct corporate and government misconduct. Supported by and working through a nationwide network of over 1300 of the country's outstanding trial lawyers, TLPJ brings precedent-setting and socially significant cases designed to advance civil rights and civil liberties, consumer and victims' rights, environmental protection and safety, occupational health and employee rights, and the protection of the poor and the powerless.

For years, the confusing requirements of the Federal Tort Claims Act have stymied the efforts of both represented and unrepresented citizens to obtain legal review of the substance of their claims. This case is a perfect example of that problem. TLPJ is particularly interested in this case because the decision below unfairly precludes an untutored lay person, who alleges serious injury, from obtaining his day in court.

SUMMARY OF ARGUMENT

By enacting the Federal Tort Claims Act (hereafter "FTCA"), Congress has provided a vehicle through which injured persons may pursue civil claims against their Federal Government. 28 U.S.C. §2401 *et seq*. The FTCA, however, contains confusing procedural mechanisms that, if not properly construed, may unfairly block both represented and unrepresented persons from having their day in court.

Petitioner is a prisoner, unlearned in the law, who has a claim of serious injury under the FTCA. Unable to afford counsel, petitioner instituted suit on his own behalf. Involuntarily, petitioner remained without counsel. Despite petitioner's repeated attempts at compliance with FTCA procedural requirements and repeated requests for appointment of counsel, petitioner was never appointed counsel and his case was dismissed for failure to comply with FTCA procedural requirements. At the time of the court's dismissal of the case, Petitioner had fully complied with all FTCA procedural requirements.

The district court refused to apply a common-sense construction of FTCA procedural requirements, ignored the gross inequities of this case, and improperly dismissed

petitioner's claim. Rigidly construing the FTCA procedural requirements, the Seventh Circuit affirmed. *McNeil v. United States*, 964 F.2d 647 (1992). This rigid construction requires prematurely filed FTCA cases to be dismissed even when the defect is cured. This hypertechnical construction of FTCA procedural requirements will forever bar petitioner from adjudicating his claim on the merits in federal court, without this Court's intervention.

Under the Seventh Circuit's holding, if prematurely filed FTCA suits with cured defects are dismissed and the claimant is still able to refile, the claimant must add another layer of paper to the case file, aggravating court congestion. Alternatively, if the FTCA claimant is unable to refile because the claim is time-barred, the claimant will be denied his or her day in court. Neither of these outcomes serve any legitimate purpose. Moreover, FTCA procedural requirements were established to afford the affected federal agency an opportunity to settle before time-consuming and expensive litigation progresses in federal court. Clearly, the mere filing a claim in federal court, without further substantive action, poses no threat to the agency's opportunity or ability to settle at an early stage.

The Seventh Circuit's hypertechnical construction of FTCA procedural requirements is unfair, unnecessary and at odds with Congressional intent to give claimants their day in court and to make FTCA litigation more like ordinary civil litigation.

ARGUMENT

I.

THE PROCEDURAL REQUIREMENTS OF THE FTCA SHOULD NOT BE GIVEN A HYPERTECHNICAL CONSTRUCTION BY THE COURTS; RATHER, A COMMON-SENSE CONSTRUCTION IS REQUIRED.

For years, the confusing procedural requirements of the FTCA have frustrated the efforts of injured persons, both represented and unrepresented, who seek legal review of the substance of their claims. The complexity of these procedural rules supports a practical, common-sense approach to construing these procedural prerequisites. A common-sense construction allows a prematurely filed FTCA action to proceed so long as no substantial progress has taken place in court before the agency has denied the claim and before the court entertains the United States' motion for dismissal. A hypertechnical construction, such as that applied by the Seventh Circuit in this case, only serves to undermine the purpose of the FTCA and unduly limits the injured person's access to the courts. In the *pro se* litigant's case, an overly rigid construction also serves to unduly limit the party's right to self-representation.

A. THE COMPLEX NATURE OF FTCA PROCEDURAL REQUIREMENTS SUPPORTS A COMMON-SENSE APPROACH IN INTERPRETING FTCA PROCEDURAL REQUIREMENTS.

The FTCA is replete with confusing procedural requirements. *See, e.g.* 28 U.S.C. §§ 2401(b), 2675(a) (1982 ed.). Indeed, the number of failed claims which result from improper compliance with FTCA criteria is staggering. Zillman, *Presenting a Claim Under the Federal Tort Claims Act*, 43 La. L. Rev. 961, 962 (1983).[1] In essence, claims that are entitled to be heard on the merits are being suppressed because of an overly rigid construction of FTCA procedural requirements.

In many cases, an FTCA litigant will file a complaint in federal court before receiving an official administrative denial of the claim by the federal administrative agency named in the complaint, but will not attempt to take substantive action on the case until after the denial is received. Even where the plaintiff has already received the denial, the United States typically asks the court to dismiss the claim, on the ground that the plaintiff failed to wait for the official administrative denial of the claim before filing the suit. Under the Seventh Circuit's holding in this case, the claim may be dismissed, even where the plaintiff takes no measures to advance the filed lawsuit until after receipt of the administrative denial.[2]

In contrast, the United States Courts of Appeals for the Third and the Eighth Circuits have recognized the

---

[1] Zillman's article does not distinguish between those citizens proceeding pro se and those represented by counsel who get caught in FTCA procedural traps. From the existing case law, one can surmise that the reported failures include both *pro se* cases and regular cases where litigants have retained legal counsel. From this, it becomes strikingly apparent that even legal practitioners are being caught in the procedural complexities of the FTCA. *See, e.g., Kubrick v. United States*, 581 F.2d 1092 (3rd Cir. 1978), *rev'd on other grounds*, 444 U.S. 111 (1979).

[2] Because the main briefs will likely discuss the different meanings of "institute" and "commence" under the FTCA, we will not address this issue. In our view, however, petitioner may have "instituted" the FTCA lawsuit in March of 1989 by filing a complaint, but did not attempt to "commence" the FTCA lawsuit by taking substantive action on the case until after he had received the administrative denial and filed it with the court.

complexity of the FTCA's claim presentation and limitations requirements and have properly applied a common-sense construction to those requirements, as in ordinary civil litigation. *See, Kubrick v. United States, supra*; *Celestine v. Veterans Administration*, 746 F.2d 1360 (8th Cir. 1984). *See also, Abernathy v. United States*, 732 F. Supp. 98 (D. Kan. 1990) (adopting the *Celestine* position). The Third and the Eighth Circuits have held that, if an FTCA claimant files a complaint before the administrative agency denies the FTCA claim and the claimant refrains from substantive action on the case, the FTCA claimant need not refile the complaint when the administrative denial is eventually received. *Kubrick*, 581 F.2d at 1098; *Celestine*, 746 F.2d at 1363. These courts recognized that a hypertechnical construction of the FTCA procedural requirement is unnecessary, and that, because of the procedural complexity of the FTCA, a practical common-sense construction is required.

A conflicting line of cases, including the instant case, mandate refiling if a case has been filed before administrative denial of the claim. *See, United States v. Burzynski Cancer Research Institute*, 819 F.2d 1301, 1306-07 (5th Cir. 1987); *Gregory v. Mitchell*, 634 F.2d 199, 204 (5th Cir. 1981).[3] This rigid construction of the FTCA is obviously impractical since it only serves to duplicate filings and aggravate court congestion. *Campbell v. United States*, 534 F.Supp. 762, 764 (D. Hawaii 1982). *See also, Kubrick*, 581 F.2d at 1098; *Celestine*, 746 F.2d at 1363. It is wasteful and needless formalism to require the claimant to refile the same complaint with the court.

[3] Because it is likely that the parties will fully discuss the contours of the law on this issue, this brief will not reiterate the current state of the law, but rather, will explain why the FTCA should be interpreted to permit plaintiff to proceed.

Moreover, a hypertechnical construction of the FTCA serves no legitimate purpose. FTCA procedural requirements were established to afford the affected administrative agency an opportunity to settle before time-consuming and expensive litigation progresses in federal court. S. Rep. No. 1327, 89th Cong., 2nd Sess. 2 (1966). Clearly, the mere filing of a claim in federal court, without further substantive action, poses no threat to the agency's opportunity or ability to settle at an early stage. On the other hand, the rigid approach of the Seventh Circuit has the negative effect of failing to safeguard the claimant's interest in instituting suit to preserve the claim. Accordingly, a strained construction of the FTCA is inconsistent with the purpose of the FTCA and its procedural requirements.

B. A COMMON-SENSE CONSTRUCTION OF FTCA PROCEDURE COMPORTS WITH THIS COURT'S TREATMENT OF *PRO SE* LITIGANTS.

The ability of citizens to represent themselves in legal proceedings dates back to the Judiciary Act of 1789. 1 Stat. 73, 92 (1789). Courts have construed the Sixth Amendment to incorporate the right of self-representation, *United States v. Plattner*, 330 F.2d 271, 273-74 (2nd Cir. 1964), and this Court has reaffirmed that right, *Faretta v. California*, 422 U.S. 806, 819 (1975). Central to the right of self-representation is the opportunity to communicate the facts and the legal issues of a case. Since our adversarial system relies upon the existence of knowledgeable practitioners on both sides of the controversy who focus, develop, and introduce all relevant facts and legal arguments to the courts, it carries the risk of unfairly disadvantaging *pro se* litigants who lack legal expertise and who may be unable to effectively assert their

legal rights. When this happens, the historical right to proceed *pro se* becomes empty.

Virtually all *pro se* litigants labor under the handicap of not being able to read procedural rules as effectively as sophisticated professionals versed in the law. McLaughlin, *An Extension of the Right of Access: The Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule*, 55 Fordham L. Rev. 1109, 1118 (1987). Recognizing their handicap, this Court has guaranteed *pro se* litigants the right to have courts liberally construe their pleadings. *Haines v. Kerner*, 404 U.S. 519 (1972), *reh'g denied*, 405 U.S. 948 (1972). *See also*, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), *reh'g denied*, 429 U.S. 1066 (1977). Significantly, this Court already has recognized the plight of the *pro se* litigant under the FTCA, "a likely trap for the inexperienced and unwary inmate, ordinarily indigent and unrepresented by counsel, with a substantial claim." *McCarthy v. Madigan*, ___ U.S. ___, 112 S.Ct. 1081, 1090 (1992). Consistent with the experience of other *pro se* litigants, petitioner was confused by the FTCA procedural prerequisites, notified the court of this confusion, and requested counsel. J.A. at 10. Under these circumstances, a fair-minded construction of procedural rules is required.

The Seventh Circuit's rigid construction of FTCA procedural rules may stem from a concern, expressed by this court in the *Faretta* case, that petitioner was trying to avoid his responsibility of procedural compliance and was exploiting his status as a *pro se* litigant. *See*, *Faretta v. California*, 422 U.S. at 835, n.46. It is important to remember, however, that in this case, petitioner became a *pro se* litigant not as a matter of choice, but rather as a matter of necessity.

Similarly, a concern that *pro se* litigation clogs the courts can not justify the extremely narrow construction of the FTCA adopted by the Seventh Circuit. Even though the number of meritorious *pro se* complaints may be minimal, it is vital that these complaints be recognized. Bradlow, *Procedural Due Process of Pro Se Civil Litigants*, 55 U. Chi. L. Rev. 659, 678 (1988). Because all litigants should have their day in court, the interest in entertaining substantive suits should outweigh any interest in reducing the number of spurious suits that might result if courts did not liberally construe the *pro se* litigant's pleadings. *Id.*

The fair-minded, common-sense approach typically afforded *pro se* litigants in other legal areas should be used when construing FTCA procedural rules. Severe, unfair consequences, including loss of access to the courts, result when courts give an unnecessarily rigid construction to the FTCA. A common sense construction is needed to safeguard *pro se* litigants from forfeiting their rights because of their ignorance of procedural rule construction.

C. THE INHERENT INJUSTICE OF BARRING PETITIONER'S CLAIM REQUIRES THE EQUITABLE TOLLING OF ANY ARGUABLE FTCA DEADLINE.

The difficulty petitioner experienced in trying to institute suit adds to the injustice which petitioner experienced when the lower court barred his claim and deprived him of his day in court. The injustice of barring petitioner's claim, under the circumstance of this case, requires the equitable tolling of any arguably applicable FTCA deadline.

Petitioner involuntarily remained without counsel during the period of time in which the United States claims

he forfeited his right to sue. Immediately after the administrative denial of petitioner's claim, petitioner filed a motion for appointment of counsel. J.A. at 10. The district court held petitioner's motion for appointment of counsel in abeyance for over a year before the court finally denied counsel. J.A. at 1, 2. During the one-year interim, petitioner repeatedly attempted to ensure that he had fully complied with FTCA procedure. Petitioner notified the court of his confusion over the procedural rules and his lack of legal resources in his state correctional facility. J.A. 10. The court's inaction in waiting a year to rule on a crucial motion for appointment of counsel—and then dismissing his case on the basis of an extremely narrow interpretation of the FTCA—is grossly unfair and should not be countenanced by this court.

The United States' conduct in this case also contributes to the gross unfairness petitioner faced when attempting to file and to preserve his claim. The United States, whatever its motive, waited until approximately 18 months after petitioner had included a copy of the agency sum certain denial in his filings and after the limitations period had run before filing its motion to dismiss petitioner's complaint. In the interim, the United States filed an answer which admitted many of plaintiff's allegations. The United States' filing of an answer, instead of a motion to dismiss, lulled petitioner into a false sense of security that he had complied with the procedural prerequisites.[4]

[4] Technically, the United States should have moved to dismiss in lieu of an answer. Either the United States was ignorant of Rule 12(b) which requires every defense to be asserted in responsive pleading or by a motion to dismiss or it deliberately took advantage of an indigent, imprisoned citizen. In either event, had the United States followed the rules, petitioner would have been alerted to any alleged procedural defects.

Despite his best efforts, petitioner was prevented from learning of the specifics of his procedural defects until after it was too late. The timing of the United States' motion left no time for petitioner to preserve his claim. In conjunction with the lower court's interpretation of the FTCA, the United States' conduct worked to deny petitioner his day in court.

The Seventh Circuit's decision relies heavily on *Hallstrom v. Tillamook County*, 493 U.S. 20, *reh'g denied*, 493 U.S. 1037 (1990). In *Hallstrom*, however, this Court noted that the dismissal of the action would not have the "inequitable result of depriving petitioners of their right to a day in court" *Id.* at 32. Unlike the *Hallstrom* petitioner, this petitioner *has been* deprived of his day in court.

Through much difficulty and without guidance, petitioner attempted to institute and preserve his claim. Particularly, in light of the inequities petitioner faced, the Seventh Circuit's rigid analysis of FTCA procedural rules is wholly inappropriate. Congress did not intend for the FTCA to be interpreted so rigidly.

Moreover, the injustice of barring petitioner's claim requires the equitable tolling of any arguable FTCA deadline. The statute of limitations in suits against the government are subject to equitable tolling. *Irwin v. Veterans Administration*, 498 U.S. 89 (1990), *reh'g denied*, 111 S.Ct. 805 (1990). In *Schmidt v. United States*, 933 F.2d 639 (8th Cir. 1991), the Eighth Circuit specifically applied *Irwin* in an FTCA context after remand from this Court for consideration of that specific issue and found that the FTCA deadline can be equitably tolled. *Id.* at 640. The inequities that petitioner faced in this case require any arguably applicable FTCA deadline to be equitably tolled here.

II.

A HYPERTECHNICAL CONSTRUCTION OF FTCA PROCEDURAL REQUIREMENTS CLASHES WITH CONGRESS' EXPRESS POLICY TO BROADEN THE SCOPE OF THE FTCA TO MAKE IT MORE LIKE ORDINARY CIVIL LITIGATION.

While the FTCA certainly does not serve as a "carte-blanche" for injured citizens to litigate their claims against the federal government, it does symbolize Congress' resolve to enhance the ability of citizens to hold federal agencies accountable for their conduct. Subsequent amendments have broadened the litigation base of those citizens able to sue under the FTCA. These amendments evince Congress's conscious intent to make suing the federal government more like suing an ordinary defendant. They also undercut the decision below, which construes the FTCA so rigidly that access to the courts is significantly curtailed.

Congress enacted the FTCA in 1946. Legislative Reorganization Act of 1946, Pub. L. No. 79-601, 60 Stat. 812 (Aug. 2, 1946). At that time, the ability to litigate only applied to claimants whose claims accrued after January 1, 1945 and whose claims were filed within one year after the date the claim accrued (or within one year of the date of enactment). In 1949, however, Congress amended the FTCA in two ways. *See* Act of Apr. 25, 1949, Pub. L. No. 55, 63 Stat. 62 (1949). First, it broadened the limitations period in Section 2401(b) from one to two years. Second, it placed a January 25, 1945 date-back provision into the statute so that the amendment renewed all otherwise

expired claims accruing on or after January 1, 1945. H.R. Rep. No. 276, 81st Cong., 1st Sess. 1 (1949).[5]

By expanding the time to institute suit from one to two years, Congress made FTCA litigation more like ordinary civil litigation. *See* H.R. Rep. No. 276, 81st Cong., 1st Sess. 1 (1949). Explaining the proposed changes, a congressional committee declared, "The committee feels that, in comparison to analogous State and Federal statutes of limitation, the existing one-year period is too short and tends toward injustice in many instances. *Id.* at 3-4. "It is not the intention of the Federal Government to deprive tort claimants of their day in court or of their remedies. . ." *Id.* at 5.

These amendments and the accompanying committee report convey Congress's intent that FTCA suits should be comparable to civil suits against ordinary defendants and should not be afforded special treatment merely because the federal government is a party to the suit. Similarly, the procedural requirements of the FTCA should not be awarded a special, hypertechnical construction by the courts merely because the United States is the defendant; rather, a practical, common-sense construction is necessary as in ordinary civil litigation.

The Seventh Circuit's decision construes the FTCA procedural requirements so rigidly that it thwarts Congress' express intent to give claimants their day in court. A sound, practical approach to FTCA procedure is necessary to carry out Congressional intent.

---

[5] Amendments to the FTCA occurred in 1966 and required that FTCA claimants present a claim to the affected administrative agency prior to filing. S. Rep. No. 1327, 89th Cong., 2nd Sess. 2 (1966). However, for purposes of this case, since 1966 the FTCA has remained in substantially the same form.

III.

THE INAPPROPRIATE DISMISSAL OF PETITIONER'S CLAIM DISSERVES THE PUBLIC INTEREST AND RENDERS THE PURPOSE AND EFFECT OF THE FTCA MEANINGLESS.

The dismissal of petitioner's claim was inappropriate and affronts the public interest. Specifically, the district court's dismissal of petitioner's claim and the Seventh Circuit Court of Appeals' affirmation of that decision is tantamount to a withdrawal of meaningful access to the courts and a nullification of an injured person's ability to bring claims under the FTCA.

It is well-established that meaningful access to the courts for all individuals is a fundamental constitutional right. *Bounds v. Smith*, 430 U.S. 817, 828 (1977); *Johnson v. Avery*, 393 U.S. 483, 485 (1969). Moreover, this Court repeatedly has held that *pro se* litigants are entitled to meaningful access to the courts. *See*, *Bounds*, 430 U.S. at 828; *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Ross v. Moffitt*, 417 U.S. 600, 612-15 (1974). The lower courts' hypertechnical analysis of FTCA procedural requirements is unwarranted and dissipates the petitioner's right of access to the court by forever precluding a disposition on the merits. In effect, because petitioner is not educated in the law and cannot wade through a complicated morass of legal procedure, petitioner's substantive FTCA claim will never be addressed by a court. A fair-minded, ordinary construction of the FTCA is needed to ensure that individuals such as petitioner are not unnecessarily being deprived of their day in court.

Accordingly, the lower courts should have given a commonsense construction of FTCA procedural requirements which Congress undoubtedly had envisioned. Such a construction

not only is expected but also safeguards petitioner's interests and society's interests in continuing the right of all citizens to bring civil claims under the FTCA, to represent themselves in a court of law, and to secure meaningful access to the courts.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted,

ARTHUR H. BRYANT
ANNE W. BLOOM
TRIAL LAWYERS FOR
PUBLIC JUSTICE, P.C.
1625 Massachusetts Ave., N.W.
Suite 100
Washington, D.C. 20036
(202) 797-8600

JOSEPH A. POWER, JR.
Counsel of Record
POWER • ROGERS • LAVIN
35 West Wacker Drive
Suite 3700
Chicago, Illinois 60601
(312) 236-9381

Attorneys for *Amicus Curiae*